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EXECUTIVE SECRETARIAT

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Remarks:

Executive Secretary

3637 (10-81)

Date

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UNITED STATES DEPARTMENT OF COMMERCE
The Under Secretary for International Trade
Washington, D.C. 20230

Executive Registry
82-11019/1

AUG 24 1982

MEMORANDUM FOR: Dr. Norman Bailey
James L. Buckley
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Herman Roser
Dr. William Schneider

FROM: Lionel H. Olmer

SUBJECT: Paper for Meeting on Export Administration Act Renewal

The attached paper lays out a proposed approach to the Export Administration Act Renewal. This paper will serve as the basis for discussion at the Under Secretary's group meeting on Thursday, August 26.

Attachment

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REVIEW OF THE EXPORT ADMINISTRATION ACT OF 1979

I. INTRODUCTION

The Export Administration Act (EAA) will be up for review in 1983; Congressional hearings are expected as early as the Spring of 1983. It is expected that the 1983 review will be lengthy and contentious due to the sensitivity and visibility of the issues involved and the interest for several large groups (industry, Black Caucus, Jewish Service Organizations, etc.). In order to prepare properly for the review, it is important to develop an interagency position on the Act by March 1983.

In addition, the Administration's implementation of export controls has recently come under fire from different quarters for a variety of reasons. Foremost among these is the argument that Commerce's trade promotion role is in conflict with its export control function. The business community has also argued that the Boycott provisions in the EAA and the Ribicoff Amendment are confusing and unnecessary. These and other sensitive issues will require not only the interagency process but also lengthy consultations with affected parties.

The Hill has already taken the initiative in preparing for the review.

Senator Jake Garn has recently introduced a bill (S.2837) amending the EAA to create a new Office of Strategic Trade (OST) which would take over Commerce's licensing function. The OST, in conjunction with the Department of Defense, would have almost exclusive authority in making licensing decisions. The Bill also recommends major substantive changes in areas such as technical data, defining proscribed destinations, etc.

On the House side, Congresswoman Byron has also just introduced the Strategic Trade Act (H.R. 6880) amending the EAA to establish a new office, the National Security Control Agency, wihin the Office of the Under Secretary of Defense for Policy. H.R. 6880 transfers to DOD licensing responsibility for all items under national security control.

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II. OTHER PROBABLE AREAS OF CRITICISM

Foreign policy controls: These are likely to attract conflicting criticism. On the one hand, some Members of Congress are unhappy with what they perceive as a liberalization of the anti-terrorism controls and the controls on South Africa (Congressman Bingham is sponsoring a bill that would reinstate foreign policy controls as they existed prior to 1 March 1982.).

On the other hand, significant sectors of industry are likely to criticize the controls on Libya and the USSR oil and gas controls as overly restrictive, and are mustering support from Congressmen whose constituencies are being injured by the controls (The House Foreign Affairs Committee has already passed a bill returning the USSR controls to the level prior to December 1981.).

Economic Impact Analysis: Both Congress and industry have criticized the Administration's "wanton disregard" of the long-term economic impact of foreign policy controls, and its lack of such in-depth analyses.

Militarily Critical Technologies List: The Administration will most likely be criticized for its tardiness in implementing the MCTL and for the broad reach of items on the MCTL.

Excessive Time in Reaching Final Licensing Decisions: Despite success in largely complying with statutory review deadlines Commerce will probably still be criticized for licensing delays, particularly where interagency disagreements arise.

Technical Data Regulations: These regulations have been the focus of a great deal of misunderstanding and criticism by the academic/scientific community.

Distribution License: Questions may be raised as to the degree to which the Distribution License constitutes a "loophole" in export controls.

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III. ISSUES TO BE REVIEWED

The following represents a list of issues that will require review over the next several months. While it is not an all-inclusive list, it does highlight the complexity and scope of the issues. Also, some of them are already being addressed in separate fora (Vice President's Task Force on Regulatory Relief, Sub-ACEP, etc.) but should be coordinated to ensure completion by March 1983.

1. Licensing Procedures: U.S. businesses have complained that the licensing process is lengthy and complicated, imposing an undue regulatory burden on them.

2. License Review Deadlines: U.S. businesses have complained that the established deadlines (up to 180 days) are too long, and especially in those cases which must be referred to COCOM for approval (COCOM members can request as much time as they wish to review a case).

3. Interagency Review Process: Industry has argued that too many agencies review each case and decisions are inconsistent.

4. Technical Data Regulations: Currently a very controversial area. The academic/scientific community perceive DOC efforts to enforce these regulations as an "expansion" of controls over open scientific exchanges and basic research. DOC is currently working with other agencies, as well as the academic/scientific community through the National Science foundation and the Association of American Universities, to clarify these regs. Also, industry has argued that the technical data regulations should be limited to MCTL items (this area is currently under review by the Sub-ACEP).

5. Simplification of the Export Administration Regulations: As mandated by the EAA, Commerce is in the process of simplifying the regulations to make them more readable and useful. This includes a reformat of the CCL. The Vice President's Task Force on Regulatory Relief is scheduled to review the EAR as well as undertaking a review of the more substantive policy and procedural issues of the licensing process.

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6. MCTL Implementation: DOC is reviewing the MCTL with Defense, Energy and U.S. industry in order to implement the essentials into the CCL. Also, the Executive Branch has been criticized for taking several years to develop the MCTL with no visible changes to the CCL.

7. Unilateral Controls: U.S. businesses complain that, because of foreign availability, unilateral controls place them at a competitive disadvantage.

8. Foreign Availability Analysis: DOC has recently taken steps to effectively perform this function: acquiring a full-time foreign availability analyst; working with the TACs to obtain foreign availability information in industry's possession; developing a form for applicants to fill out and submit with application which will supply us with the foreign availability information they regard as relevant to their proposed export. Criticism is expected from industry and the Hill noting that Commerce has not progressed far enough and is not taking foreign availability into account in case processing.

9. Foreign Policy Controls: A thorough review is necessary to fend off challenges as to the efficacy of these controls in general, and to determine the degree to which they achieve their objectives in the face of foreign availability.

10. Economic Impact Analysis: Industry and the Hill have argued that the Executive Branch disregards the economic impact in imposing controls. Although DOC is evaluating its estimation technique, including utilization of economic data provided by industry through the Sub-PEC, this issue will be a dominant one in the EAA review.

11. Restriction of Imports (U.S. Sanctions): The EAA of 1979 provides the Executive Branch with the ability to restrict U.S. exports to foreign violators and deny exporting provileges to U.S. violators. For added flexibility in dealing with violators, the power to restrict imports into the U.S. by violating parties may be necessary to enforce the EAA. This initiative may be opposed vigorously by U.S. industry and foreign governments.

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12. Short Supply Controls: With the elimination of quantitative restrictions on the export of refined petroleum products, the Moakley Amendment of the EAA of 1979 simply results in a paperwork exercise and delay in issuing licenses (a 30-day wait is required while Congress reviews applications). Industry has suggested eliminating the validated license requirement while retaining the power to reimpose controls if shortages occur.

13. Enforcement Issues: Consideration should be given to amending the statute to provide specifically for detention and seizures of suspected outbound cargoes, search, seizure, arrest and firearms authority for special agents of the Office of Export Enforcement. The section 12(c), confidentiality section, should be reviewed for possible amendment in light of past difficulties encountered in export enforcement situations. Additional law enforcement tools should also be examined including allowing court ordered electronic surveillance in cases involving national security control investigations.

IV. METHODOLOGY

To provide general guidance in the review of the above-mentioned issues, it is recommended that Commerce chair an Interagency Oversight Group with members at the Under Secretary level (membership composed of representatives from all interested agencies plus two from industry), and using the existing ACEP structure to staff out each of the relevant issues. This suggestion is based on the success of the preparatory work done for the COCOM High Level Meeting overseen by the Under Secretary's Group. Wherever posible, the same procedures, and already-existing groups should be utilized to avoid duplicative effort.

The Oversight Group will direct the interagency working-level group (ACEP) at the AS level, which is already in place. The ACEP will be used to resolve issues.

The ACEP Chairman will divide lead responsibility for each issue among the agencies, who will then establish lower-level Technical Working Groups to examine each issue and provide recommendations to the ACEP.

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Consultations

It is extremely important to consult with all interested parties before the Administration formulates its position. Accordingly, the Oversight Group, ACEP members and other levels of government should lay out a comprehensive consultative agenda that includes the ISACs, Sub-PEC, MAPAG, and TACs. Some organizations--Sub-PEC, ISACs--are already working on recommendations for the EAA and should be integrated into the overall plan.

Public Hearings

In addition, public hearings on the issues should also be held in cities like Boston, New York, Chicago, San Francisco, and Dallas. These areas contain the bulk of the high technology companies that are affected by the EAA. Results of these hearings will be submitted to the ACEP for inclusion into the final recommendations.

V. PROPOSED SCHEDULE

1. The Under Secretary's Oversight Group will meet every two months to review progress made to date, and to provide necessary guidance.

2. The ACEP will meet every month to review progress, and to resolve any differences which may arise.

3. The ACEP will divide issues and work assignments by September 15, 1982.

4. The lower level groups designated by the ACEP will submit an initial draft identifying problems, including pertinent recommendations, by October 15, 1982.

5. The ACEP will integrate plans and issues by October 30, 1982.

6. After submission of initial draft, consultations with industry will start with industry on an agreed-upon schedule (develop schedule by September 15, 1982).

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7. Public hearings should start on October 15, 1982 with no more than one per month.

8. Drafts of proposals due from agencies by December 15, 1982 with integration and distribution to agencies by January 5, 1983.

9. ACEP will complete integration of public comments into the draft by February 15, 1983, and submit final product to the U.S. Oversight Group.

10. Administration position due by March 31, 1983.

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